

**ANNUAL REPORT
to the Commissioner
Department of Environmental Protection
July 1, 1992 -- June 30, 1993**

I. Introduction

The Board of Underground Tank Installers was established in 1985 by 32 MRSA Chapter 104-A and its authorities expanded and modified by subsequent amendments in 1987, 1989, 1990, and 1992. According to the statute, the purpose of the Board is as follows:

"In order to safeguard the public health, safety and welfare, to protect the public from incompetent and unauthorized persons, to assure the highest degree of professional conduct on the part of underground oil and underground hazardous substance storage tank installers and to assure the availability of underground oil and underground hazardous substance storage tank installations of high quality to persons in need of those services, it is the purpose of this chapter to provide for the regulation of persons offering underground oil and underground hazardous substance storage tank installation services."

Thus, the Board has two major responsibilities: (1) certifying underground tank installers and underground gasoline tank removers, and (2) taking disciplinary actions against installers and removers who violate its enabling statutes and rules. By law, the Board is also charged with submitting an annual report to the Commissioner of the Department of Environmental Protection (32 MRSA Section 10004(6)). This report is designed to fulfill that mandate for FY 92/93. It covers the following major subject areas:

- Membership and Staffing;
- New Certifications and Testing;
- Recertification and Continuing Education;
- Processing of Complaints;
- Rulemaking and Program Development;
- Newsletter;
- Data management; and
- Financial Statement

II. Membership and Staffing

Members of the Board are as follows:

- Joseph (Bruce) Probert (Me. Chamber of Commerce) - Term expires 12/31/95.
- Steven Jacobson, chair (Me. Oil and Solid Fuel Board) - Second term expires 12/31/93.
- Rance Knowles (Maine Fire Chief Association) - Term expires 12/31/94.
- Harry Stetson (Public Member) - Term expires 12/31/95.
- Alan Prysunka (DEP) - Term expires 12/31/93.
- Richard Tuttle (Me. Oil Dealer's Assoc.) - Second term expires 12/31/94.
- Gerald Lapointe, Sr. (certified installer) - Term expires 12/31/95.

Joseph (Bruce) Probert, Harry Stetson, and Gerald Lapointe are new members this year. Mr. Probert was appointed March 31, 1993 to replace former chairman Leslie Smith from the Maine Chamber of Commerce, whose maximum of two (2) terms ended December 31, 1992. Mr. Stetson was appointed March 1, 1993 to replace Homer Ward as public member. Mr. Ward had indicated he would not accept a second term. Mr. Lapointe was appointed January 21, 1993 to replace Elmer F. (Ted) Walker as the certified installer's representative. Mr. Walker's maximum of two (2) full terms ended December 31, 1992. Steven Jacobson was elected chairman in March 1993. James Hynson and Theresa Scott continued to provide staffing to the Board. Additional sporadic support was provided by staff from the Department of Environmental Protection, including W. David McCaskill, Diana McLaughlin, Beth DeHaas, and Tim Wright. Support from the office of the Attorney General was provided by Dennis Harnish and Phyllis Gardiner.

III. New Certifications and Testing

This section includes discussions on (A) number of installers certified, (B) written exams, (C) on-site exams, (D) upgrades, and (E) apprenticeships.

A. Number of Installers Certified

The number of certified installers is 209, compared to 213 that were certified at the end of FY 91/92. At present, this includes 204 who hold Class 2 Oil Tank Installer Certificates, and five (5) who hold a Class 3 Oil Tank Installer. During the year, five (5) new installers became certified. One (1) installer was ordered by the Board to surrender his certificate as a result of multiple enforcement actions. One (1) installer failed to meet continuing education provisions of a probation which the Board granted as a result of his being short of the necessary continuing education to become recertified. Nine (9) elected not to apply for recertification once their old certificates expired.

There are no underground gasoline tank removers in Maine. Two individuals took and passed the initial underground tank remover examination this year, but as of yet have not scheduled on-site examinations.

No underground hazardous substance tank installers were certified by the Board. As of the end of this year, the Board has yet to receive any applications for underground hazardous substance tank installer certificates in the six (6) years the program has been effective. In the event a facility owner would wish to install or replace an underground hazardous substance tank, a legally qualified person would not be available. We suggest the DEP consider seeking amendment of its statutes and/or rules to allow such an installation or replacement to proceed under the supervision of a professional engineer and underground oil tank installer while the Board would seek abolishment of this distinctly undemanded program.

B. Written Exams

Minor effort was spent in FY 92/93 in updating written examinations, principally the initial oil tank installer examination, to incorporate technical changes. Specifically, updated versions of recommended practices published by the Steel Tank Institute were incorporated into our tests and study material.

We offered two (2) written examinations during FY 92/93: December 9, 1992 and April 14, 1993. In all cases, the Board offered the initial oil tank installer examination, the final examinations for Classes 2 and 3 underground oil tank installer certification, the underground gasoline tank remover examination, and the underground hazardous substance tank installer examination. Results of those examinations are provided in Table 1. A total of 24 applicants took the exams, including 12 initial oil tank installer exams, eight (8) Class 2 oil tank installer final exams, two (2) Class 3 oil tank installer final exams, and two (2) gasoline tank remover exams. Of these fourteen (14) passed while ten (10) failed.

| Exam | 12/9/92 | | | 4/14/93 | | | Total | | |
|----------------------------|---------|------|-------|---------|------|-------|-------|------|-------|
| | Pass | Fail | Total | Pass | Fail | Total | Pass | Fail | Total |
| Initial Oil Tank Installer | 5 | 4 | 9 | 2 | 1 | 3 | 7 | 5 | 12 |
| Class 2 Final | 2 | 2 | 4 | 2 | 2 | 4 | 4 | 4 | 8 |
| Class 3 Final | 0 | 1 | 1 | 1 | 0 | 1 | 1 | 1 | 2 |
| Gasoline Tank Remover | 1 | 0 | 1 | 1 | 0 | 1 | 2 | 0 | 2 |
| Haz. Sub. Tank Installer | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 8 | 7 | 15 | 6 | 3 | 9 | 14 | 10 | 24 |

Table 1. Results of written examinations given by the Board of Underground Storage Tank Installers FY 92/93.

C. On-Site Exams

1990 amendments to the Board's enabling legislation and rules eliminated the need to conduct on-site examinations for applicants for oil tank installer certificates. While on-site exams remain required for underground hazardous substance tank installers and underground gasoline tank removers, no applications for underground hazardous substance tank installer certificates were received in FY 92/93. Even though two (2) applicants passed the underground gasoline tank remover examination, they did not attempt to schedule on-site exams with the Board's staff. Therefore, no on-site exams were conducted.

D. Upgrades

With the elimination of the Class I certificate, no applications for upgrade of Class 2 to Class 1 certificates were received or processed this year.

E. Apprenticeships

By virtue of passing the initial oil tank installer examination, seven (7) applicants qualified as oil tank installer apprentices this year, in addition to the 49 which qualified in previous years. Ten (10) of those subsequently completed the number of installations or were granted a variance, required to make them eligible to take the final exam. Of those, five (5) passed the final exam. Twenty (20) apprentices elected to renew their apprentice certificates or have certificates which are current, and thus twenty-five (25) underground oil tank installer apprentices currently exist in Maine.

F. Variances

1990 amendments to the Board's enabling legislation instituted a variance process for individuals to obtain variances for the apprenticeship portion of the certification process (32 MRSA Sec. 10010.3-A.D; 06-481 CMR c. 3 Sec. 4.D). During FY 92/93, the Board had no formal applications for variances, although it was forced to deny one request to have three out-of-state installations counted for apprenticeship because the applicant failed to show documentation of those installations. At the Board's request, staff developed a variance application form to assist both the applicants and the Board in processing variance requests. An opinion was obtained from the Attorney General's office indicating a variance can be granted for a portion of the installations required for apprenticeship. Two individuals who obtained variances last year took and passed the final Class 2 installer's examination and became certified in Maine as underground tank installers.

IV. Recertification and Continuing Education

Of the 213 installers who were certified to install underground tanks at the end of FY 91/92, seventeen (17) of them held certificates which expired in FY 92/93. Of those, twelve (12) applied and were granted certificates, while four (4) did not reapply. Two (2) individuals applied but had not met the Board's continuing education requirement, and thus disciplinary action is ensued. Both were granted a six month probation to make up education with payment of a small civil penalty. One had not obtained the required education at that time, and his probationary certificate expired. The other's probationary period has not yet been completed.

Continuing education opportunities accredited by the Board in FY 92/93 are listed in Table 2. In addition, educational opportunities approved in FY 91/92 continued to be available included an 8 (eight) hour OSHA course (accredited for 3 credit hours) sponsored by JetLine, Inc.

| Sponsor | Subject | Date Approved | Credit Hours | Number of Sessions |
|------------------|------------------------------------|------------------|-----------------|-----------------------|
| ME Oil Dealers | Explosimeter Use | 10/16/92 | 4 | 2 |
| PIM Enterprises | UST Closure (Renewal) | 12/18/92 | 4 | Unspec. |
| PIM Enterprises | UST Installation (Renewal) | 12/18/92 | 6 | Unspec. |
| PIM Enterprises | UST Site Assessment | 12/18/92 | 4 | Unspec. |
| PIM Enterprises | Grounwater/Soil Sampling | 12/18/92 | 4 | Unspec. |
| Adams & Fogg Co. | Installer's Seminar | 1/15/93 | 4 | 3 |
| SafeTech | 40 hour OSHA Safety (Renewal) | 6/11/93 | 8 | Unspec. |
| SafeTech | 8 hour OSHA Refresher (Renewal) | 6/11/93 | 3 | Unspec. |
| Total | | | 37 | |

Table 2. Continuing education opportunities accredited by the Board of Underground Storage Tank Installers FY 92/93.

The Board expressed some concern that several programs appeared to be more "sales" and less "educational" oriented than they should. As a result, discussions are beginning with Board and Department staff to increase the amount of State sponsored training.

V. Processing of Complaints

Disciplinary actions involving thirty (30) investigations and fifty (50) alleged violations were processed and resolved in FY 92/93, including ten (10) held over from 1991/92. A summary of the Board's actions in these matters is presented in Appendix A.

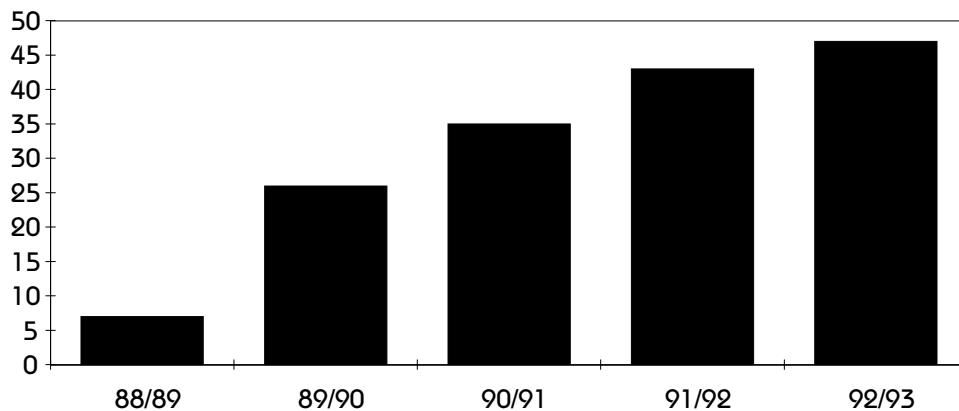
Twenty-six (26) complaints involving forty-seven (47) alleged violations were received in FY 92/93. Investigations which remain unresolved at the end of the year are listed in Table 3.

| Principle Violation | Year | No. | Date Received | Date Sum. | Action Date | Board Action |
|--------------------------------|-------------|------------|--------------------------|----------------------|------------------------|-------------------------|
| 38MRSA564.1.A | 1993 | 2 | 8/19/92 | 10/7/92 | 6/11/93 | Table |
| 06-096 CMR691App. D.2 | 1993 | 13 | 11/23/92 | 12/8/92 | 6/11/93 | Hearing |
| 06-096 CMR691.6.D.2 | 1993 | 13 | 11/23/92 | 12/8/92 | 6/11/93 | Hearing |
| 38 MRSA 563.1.A | 1993 | 14 | 11/23/92 | 12/9/92 | 6/11/93 | Hearing |
| 38 MRSA 565.1.A | 1993 | 14 | 11/23/92 | 12/9/92 | 6/11/93 | Hearing |
| 06-096CMR691App.J.6.c | 1993 | 25 | 4/30/93 | 6/2/93 | 6/11/93 | Hearing |
| 38MRSA563.1.A | 1993 | 26 | 6/10/93 | | | |

Table 3. Maine Board of Underground Storage Tank Installers ongoing enforcement actions as of June 30, 1993.

Figure 1 shows the number of investigations conducted by the Board and its staff since promulgation of the Board's rules in August, 1988. This graph indicates a significant increasing trend in Board enforcement efforts. However, the increase appears to be occurring at a decreasing rate.

**Figure 1. Alleged Violations Received as Complaints
FY92/93**



In an effort to improve consistency in its enforcement decisions, the Board requested staff to draft an enforcement policy for discussion and hopefully eventual use by the Board. Although that project was initially completed in FY 91/92, amendments to DEP underground tank rules necessitated the Board revisit and revise its enforcement policy. Revisions were finalized and approved by the Board on July 30, 1992.

VI. Rulemaking and Program Development

Enaction of P.L. 1992 c. 817 resulted in the need to amend 06-481 CMR chapters 1, 3, and 5. Staff has drafted amendments, upon which the Board decided to go forward with rulemaking. While the rulemaking process was initiated last year, final rules were promulgated November 10, 1992.

VII. Newsletter

One of the initial benefits of certification of installers was the development of an ability by the State to communicate with installers via a newsletter. State budgetary constraints and limited staff time required staff to prioritize their efforts and resulted in the newsletter being delayed for several years.

However, a quarterly newsletter entitled "The Maine Installer" finally began publication with its first issue in August, 1992. Two additional issues have been published since. The fourth issue for this year has been delayed for two reasons. First, we would like to be able to publish, in the next newsletter, a summary of legislation potentially significant to installers. A number of significant events occurred in the last session, and we need additional time to comprehend them before attempting to summarize them. Second, recent demands on the staff workload, especially in the enforcement arena, necessitated assigning priorities to that effort.

So far, the response to the Board's newsletter has been favorable.

VIII. Data Management

Difficulties in obtaining quality, current information continued to decline with efforts to automate our data needs. However, further efforts to improve are needed. Databases developed last year on EXCEL 3.0 to track basic data on installers and removers, enforcement activities, test results, continuing education programs, and continuing education attendance received limited use because of a continuing unavailability of training for the Board's secretary on the use of the software to enable more frequent maintenance of the databases. However, the Department has begun a training program which we already made arrangements to use. An apprentice installation database has also been developed. Future needs and plans may include associating the various independent databases identified above with each other, but are somewhat dependant upon the progress of the Department in upgrading the "UNO" computer system, as discussed below..

All the Board's staff continued to provide input into the development of an upgraded version of UNO (DEP underground tank registrations) which would be designed to work in the database software entitled ORACLE. We appreciate this opportunity and hope the ultimate system will serve our needs and can replace our temporary efforts in EXCEL. As we understand it, development of this system continues and we are available to test it out once it becomes on-line.

IX. Financial Statement

The Board's financial statement for FY 92/93 is provided in Table 4. Two points should be considered when examining these data. First, income is estimated, based upon the number of people who applied for certification, took the various tests, became certified, were recertified, or were issued civil penalties. This was necessary because actual income to the Board is lumped with other underground tanks income in the Department's accounting system. Attempts were made the last two years to create budget categories in the State's accounting system to track Board income. However, due to a number of budget crises within the State last year, DEP Administrative staff had to place a low priority on developing these budget categories. We would very much appreciate assistance in this matter as soon as possible.

Second, the income shown for recertification varies widely on a biennial basis. Recertification is required every two (2) years, and this income for this year reflects the vast majority of tank installers not becoming recertified this year. It is therefore expected that this figure will follow two (2) year cycles of being high and low.

| | |
|---|---------------------|
| Income (Estimated) | |
| Applications/Initial Written Examinations | \$2450.00 |
| Apprenticeship Variances | \$0.00 |
| Apprenticeship Renewals | \$2850.00 |
| Sales of Study Packets ¹ | \$150.00 |
| On-Site Examination Fees | \$0.00 |
| Final Exams/New Certifications | \$2500.00 |
| Recertifications | \$1800.00 |
| Late fees/recertification | \$0.00 |
| Civil Penalties | \$9300.00 |
| Subtotal | \$19050.00 |
| Expenses: Account 014 06A 1520 44x | |
| Personal Services | \$54357.80 |
| Fringe | 16808.23 |
| Contractual | 494.69 |
| Travel | 392.57 |
| Supplies | 1292.10 |
| Other | 5944.52 |
| Sta-Cap | 2048.56 |
| Subtotal | \$81338.47 |
| Grand Total | (\$62288.47) |

Table 4. Financial statement for the Board of Underground Tank Installers, July 1, 1991 through June 30, 1992.

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Respectfully Submitted,

Steven R. Jacobson,
Chairman

¹Underground gasoline tank remover applicants only; all other study material costs are included into examination fees.

Appendix A

Maine Board of Underground Storage Tank Installers
Summary of FY 92/93 Enforcement Actions (By Violation)

| Principle Violation | Year | No. | Date Received | Action Date | Result | Fine | Days Susp | Days Probation | Other Penalty | Date Closed |
|------------------------|------|-----|---------------|-------------|-------------------|---------|-----------|----------------|-----------------|-------------|
| 06-096CMR691.5.D.11.a- | 1993 | 12 | 11/19/92 | 12/18/92 | Dropped | | | | | 4/29/93 |
| 06-096CMR691.5.D.15.a- | 1993 | 12 | 11/19/92 | 12/18/92 | Dropped | | | | | 4/30/93 |
| 06-096CMR691.6.D.2 | 1993 | 21 | 1/13/93 | 3/19/93 | Dismiss | | | | | 3/19/93 |
| 06-096CMR691.9.B.1.b | 1992 | 7 | 11/15/91 | 7/29/92 | Order | \$800 | | 90 | Repair/Retrofit | 7/29/92 |
| 06-096CMR691.9.B.2 | 1992 | 7 | 11/15/91 | 6/11/92 | Order | \$800 | | 90 | Repair/Retrofit | 7/29/92 |
| 06-096CMR691.9.B.2 | 1992 | 7 | 11/15/91 | 6/11/92 | Order | \$800 | | 90 | Repair/Retrofit | 7/29/92 |
| 06-096CMR691.App C.1 | 1993 | 22 | 1/25/93 | 4/30/93 | CA | \$250 | | | | 4/30/93 |
| 06-096CMR691.App.C.1 | 1993 | 12 | 11/19/92 | 12/18/92 | Dropped | | | | | 4/30/93 |
| 06-096CMR691.App.J.11 | 1992 | 4 | 10/2/91 | 7/7/92 | CA | \$1,000 | 30 | | | 7/7/92 |
| 06-096CMR691.App.J.6 | 1993 | 17 | 12/8/92 | 1/15/93 | Dismiss | | | | | 1/15/93 |
| 06-096CMR691.App.J.6 | 1993 | 18 | 12/8/92 | 3/19/93 | Order | | | | Warning | 3/19/93 |
| 06-096CMR691.App.J.6 | 1993 | 19 | 12/8/92 | 3/19/93 | Dismiss | | | | | 3/19/93 |
| 06-481CMR1.4.A(1)(c) | 1992 | 4 | 10/2/91 | 6/11/92 | CA | | | | See other count | 7/7/92 |
| 06-481CMR1.4.B(1) | 1992 | 18 | 5/1/92 | 7/7/92 | Dropped | \$250 | | 180 | Ed. | 7/29/92 |
| 06-481CMR1.4.B(1) | 1992 | 19 | 5/5/92 | 7/7/92 | CA | \$250 | | 180 | Ed. | 9/29/92 |
| 06-481CMR1.4.B(1) | 1992 | 20 | 5/31/92 | 7/7/92 | CA | \$250 | | 180 | Ed. | 9/29/92 |
| 06-481CMR1.4.B(1) | 1992 | 21 | 4/27/92 | 7/7/92 | App. Withdrawn | \$250 | | 180 | Ed. | 7/30/92 |
| 06-481CMR1.4.B(1) | 1992 | 22 | 5/13/92 | 7/7/92 | CA | \$250 | | 180 | Ed. | 9/29/92 |
| 06-481CMR1.4.B(1) | 1992 | 23 | 4/17/92 | 7/29/92 | Order | | | | Refuse | 10/2/92 |
| 06-481CMR1.4.B(1) | 1993 | 9 | 10/9/92 | 12/11/92 | CA | | 60 | | | 12/11/92 |
| 06-481CMR1.4.B(1) | 1993 | 10 | 10/28/92 | 12/11/92 | CA | \$250 | | 180 | Ed. | 12/11/92 |
| 06-481CMR1.4.B(1) | 1993 | 23 | 2/8/93 | 2/23/93 | CA | \$250 | | 180 | Ed. | 3/19/93 |
| 06-481CMR3.4.B | 1993 | 1 | 6/24/92 | 9/29/92 | CA | \$100 | | | | 9/29/92 |
| 06-481CMR3.4.B | 1993 | 7 | 9/16/92 | 9/29/92 | CA | \$100 | | | | 10/16/92 |
| 06-481CMR3.4.B | 1993 | 7 | 9/16/92 | 9/29/92 | CA | \$100 | | | | 10/16/92 |
| 06-481CMR3.4.B | 1993 | 7 | 9/16/92 | 9/29/92 | CA | \$100 | | | | 10/16/92 |

Appendix A (concluded)

| Principle Violation | Year | No. | Date Received | Action Date | Result | Fine | Days Susp | Days Probation | Other Penalty | Date Closed |
|---------------------|------|-----|---------------|-------------|----------------------|---------|-----------|----------------|-----------------|-------------|
| 06-481CMR3.4.B | 1993 | 11 | 10/6/92 | 12/11/92 | CA | \$100 | | | | 12/11/92 |
| 06-481CMR3.4.B | 1993 | 15 | 11/28/92 | 12/11/92 | CA | \$100 | | | | 12/15/92 |
| 06-481CMR3.4.B | 1993 | 15 | 11/28/92 | 12/11/92 | CA | \$100 | | | | 12/18/92 |
| 06-481CMR3.4.B | 1993 | 15 | 11/28/92 | 12/11/92 | CA | \$100 | | | | 12/18/92 |
| 06-481CMR3.4.B | 1993 | 15 | 11/28/92 | 12/11/92 | CA | \$100 | | | | 12/18/92 |
| 06-481CMR3.9 | 1992 | 17 | 6/25/92 | 7/7/92 | CA | \$250 | | 180 | Ed. | 7/13/92 |
| 06-481CMR3.9 | 1993 | 5 | 9/9/92 | 9/29/92 | CA | \$250 | | 180 | Ed | 12/11/92 |
| 32MRSA10014.3 | 1992 | 15 | 5/29/92 | 6/11/92 | CA | \$250 | | 180 | Ed. | 7/29/92 |
| 38MRSA1306.1 | 1993 | 16 | 12/8/92 | 1/15/93 | Dismiss | | | | | 1/15/93 |
| 38MRSA543 | 1993 | 3 | 8/28/92 | 12/11/92 | CA | \$1,000 | 90 | | | 1/15/93 |
| 38MRSA563.1.B | 1992 | 16 | 6/22/92 | 10/16/92 | Order | \$500 | | | | 1/20/93 |
| 38MRSA563.8 | 1992 | 16 | 6/22/92 | 10/16/92 | Order | \$500 | | | | 1/20/93 |
| 38MRSA564.1.B | 1993 | 12 | 12/18/92 | 4/30/93 | CA | \$800 | | | | 6/13/93 |
| 38MRSA566-A.2 | 1993 | 3 | 8/28/92 | 12/11/92 | CA | \$250 | | | | 1/15/93 |
| 38MRSA566-A.2 | 1993 | 17 | 12/8/92 | 1/15/93 | Dismiss | | | | | 1/15/93 |
| 38MRSA566-A.2 | 1993 | 18 | 12/8/92 | 3/19/93 | Order | | | | Warning | 3/19/93 |
| 38MRSA566-A.2 | 1993 | 19 | 12/8/92 | 3/19/93 | Dismiss | | | | | 3/19/93 |
| CA92-17 | 1993 | 20 | 12/28/92 | 1/15/93 | CA | | | 60 | | 1/15/93 |
| CA92-9.12(b) | 1993 | 8 | 9/29/92 | 10/16/92 | Notice of Expiration | | | | | 10/16/92 |
| CA92-9.12(c) | 1993 | 8 | 9/29/92 | 10/16/92 | Notice of Expiration | | | | | 10/16/92 |
| Or92-7.1 | 1993 | 24 | 2/19/93 | 3/19/93 | Order | | | | Surrender | 4/30/93 |
| Or92-7.2 | 1993 | 24 | 2/19/93 | 3/19/93 | Order | | | | See other count | 4/30/93 |
| Or92-7.3 | 1993 | 24 | 2/19/93 | 3/19/93 | Order | | | | See other count | 4/30/93 |
| Or92-7.5 | 1993 | 24 | 2/19/93 | 3/19/93 | Order | | | | See other count | 4/30/93 |